

Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 NSCE-00 PM-04 NSC-05 SP-02 SS-15 L-03

CIAE-00 INR-07 NSAE-00 EB-07 TRSE-00 OMB-01 IGA-02

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R 260925Z JUL 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 7968

INFO SECDEF WASHDC

JCS WASHDC

CINCPAC

CINCPACAF

CINCPACFLT

CINCPACREPHIL SUBIC

CG 13TH AF CLARK

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 10964

FROM USDEL 155

CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: TAXATION--TAX DECLARATION
FORM

REF: (A) MANILA 9972 (USDEL 100); DTG 090843Z JUL 76

(B) STATE 180870; DTG 212314Z JUL 76

1. DECLARATION FORM SET OUT IN PARA 6 OF REF A WOULD, AS
PROPOSED, HAVE UNIQUE APPLICABILITY TO U.S. PERSONNEL.
ACCORDING TO PHIL REP, PHIL CITIZENS ARE REQUIRED TO
FILE TAX RETURN ONLY IF INCOME EXCEEDS 1800 PESOS REGARD-
LESS OF SOURCE. RESIDENT ALIENS MUST FILE RETURN ONLY IF
PHILIPPINE SOURCE INCOME EXCEEDS 1800 PESOS. A
TAX CLEARANCE CERTIFICATE INCLUDING DECLARATION OF PHILIP-
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PINE SOURCE INCOME IS REQUIRED UPON DEPARTURE FROM THE

PHILIPPINES OF ALL PERSONS SPENDING MORE THAN 72 HOURS IN THE COUNTRY. NORMAL FEE IS APPROXIMATELY 30 PESOS.

2. WITH REGARD TO U.S. FORCES, PHIL INTERNAL REVENUE COMMISSION NOTED IN 1970 OPINION THAT MBA SILENT ON TAX CLEARANCE CERTIFICATES AND WENT ON TO RULE THAT (A) U.S. MILITARY COULD DEPART WITHOUT THE CERTIFICATE UNTIL THE PRACTICE MIGHT BE MODIFIED BY LAW; (B) CIVILIAN EMPLOYEES MUST OBTAIN THE CERTIFICATE BUT WERE EXEMPTED FROM PAYMENT OF THE DOCUMENTARY STAMP TAX, AND (C) DEPENDENTS MUST OBTAIN TAX EXEMPTION CERTIFICATES AND PAY THE RELATED DOCUMENTARY STAMP TAX. IN PRACTICE, ONLY CIVILIAN EMPLOYEES AND DEPENDENTS DEPARTING BY COMMERCIAL CARRIER HAVE BEEN OBTAINING THE CERTIFICATES AS U.S. MILITARY DOES NOT ENFORCE THE REQUIREMENT AT CLARK.

3. GOP APPARENTLY FEELS IT HAS MUCH LESS CONTROL OVER U.S. PERSONNEL THAN IT DOES OVER PHIL CITIZENS OR OTHER RESIDENT ALIENS BECAUSE U.S. PERSONNEL ARRIVE AND DEPART FROM MILITARY PORTS OF ENTRY AND LIVE AND WORK IN AREAS WHERE PHIL AUTHORITIES CANNOT READILY OBSERVE OR INVESTIGATE THEIR ACTIVITIES. GOP ALSO BELIVES UNREPORTED TAXABLE INCOME IS SUBSTANTIAL PROBLEM. GOP WISHES THEREFORE TO ESTABLISH TIGHTER REPORTING CONTROLS OVER U.S. SERVICEMEN. THEIR INITIAL PROPOSAL WAS TO REQUIRE ALL U.S. PERSONNEL TO FILE INCOME TAX RETURNS. AN ALTERNATIVE THEY WOULD UNDOUBTEDLY CONSIDER WOULD BE TO REQUIRE HENCEFORTH TAX CLEARANCE CERTIFICATES FROM ALL DEPARTING U.S. PERSONNEL.

4. PHIL REP SEEN PROPOSED DECLARATION AS LESS ONEROUS REQUIREMENT THAN EITHER TAX RETURN OR TAX CLEARANCE CERTIFICATE. ALSO SEES U.S. WILLINGNESS TO ADOPT SUCH A MEASURE AS AN INDICATION OF U.S. COOPERATION IN ACHIEVING A LEGITIMATE INTERNAL REVENUE AIM. PHIL REP HAS INFORMALLY EXPRESSED SOME DOUBTS ON PRACTICAL VALUE OF PROPOSED DECLARATION, BUT HAS INDICATED THAT SOME FORM OF STRICTER REPORTING CONTROL HAS CONSIDERABLE COSMETIC IMPORTANCE FOR PHIL PANEL AND IS CONSIDERED IMPORTANT

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TO PHIL POSITION ON OTHER TAX ISSUES.

5. UNDER PROPOSAL, RESPONSIBILITY OF U.S. WOULD INCLUDE OBTAINING FORM FROM ALL PERSONNEL (INCLUDING CIVILIAN COMPONENT AND DEPENDENTS) AND FORWARDING ONLY THE NAMES OF THOSE INDIVIDUALS WHO INDICATE TAXABLE PHIL SOURCE INCOME TO INTERNAL REVENUE OFFICE. IT IS PROPOSED THAT FORM BE OBTAINED ANNUALLY AND UPON FINAL DEPARTURE OF INDIVIDUAL

FROM PHILIPPINES.

6. WE BELIEVE WE HAVE FOR THE MOMENT LAID THE SUGGESTION OF REQUIRING EVERYONE TO FILE A PHIL TAX RETURN TO REST. WITH RESPECT TO THE PROPOSED DECLARATION, WE HAVE OBSERVED THAT NOTHING COMPARABLE IS REQUIRED OF OUR PERSONNEL IN OTHER COUNTRIES AND THAT APPLICATION OF REQUIREMENT EXCLUSIVELY FOR U.S. PERSONNEL HERE HAS DISCRIMINATORY OVERTONES. THE REJECTION OF THE DECLARATION PROPOSAL OUTRIGHT, HOWEVER, WOULD PROBABLY RESULT IN A GOP RETREAT TO INSISTENCE ON UNIVERSAL FILING OF TAX RETURNS OR, MORE LIKELY, ON TAX CLEARANCE CERTIFICATES FOR ALL DEPARTING PERSONNEL.

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7. WE ARE ACCORDINGLY EXPLORING INFORMALLY A COMPROMISE WHEREBY THE PROPOSED DECLARATION WOULD BE USED ONLY AT THE TIME OF FINAL DEPARTURE--EFFECTIVELY IN LIEU OF A TAX CLEARANCE CERTIFICATE. THIS APPROACH WOULD FOR US HAVE THE ADVANTAGES OF (A) SAVING US A 38 PESO FEE ON EACH

DEPARTURE; AND (B) USING A SIMPLER FORM. THIS APPROACH WOULD STILL DEMONSTRATE A WILLINGNESS ON OUR PART TO COOPERATE WITH GOP AUTHORITIES IN THIS AREA. IT CAN ALSO BE REPRESENTED AS EQUALLY EFFECTIVE BUT LESS ADMINISTRATIVELY BURDENSOME THAN A REQUIREMENT FOR AN ANNUAL FILING SINCE MOST TOURS OF DUTY ARE ONLY 18-24 MONTHS ANYWAY. THIS PROCEDURE WOULD BE CONJOINED WITH AN INFORMAL OBLIGATION ON OUR PART TO INCREASE PUBLICITY ON BASE CONCERNING REQUIREMENTS FOR FILING PHIL INCOME TAX RETURN.

8. AS WE SEE IT, THE TAX DECLARATION ON DEPARTURE COULD BE FILED 30 OR 60 DAYS BEFORE DEPARTURE. FOR THE VAST MAJORITY OF DEPARTES THERE WOULD PRESUMABLY BE NO PROBLEM.
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ONLY THE NAMES OF THOSE WHOSE FORMS INDICATED PHIL SOURCE INCOME OVER 1800 PESOS WOULD BE FORWARDED TO PHIL AUTHORITIES, AND AN ISSUE WOULD ARISE ONLY IF PHIL AUTHORITIES ASSERTED A FAILURE TO FILE THE REQUIRED TAX RETURN AND TO PAY THE REQUIRED TAXES. THIS SAME EVENTUALITY COULD ARISE IF TAX CLEARANCE CERTIFICATES WERE REQUIRED, OR EVEN IN THE ABSENCE OF ANY FORM WHATSOEVER IF PHIL AUTHORITIES BELIEVED A DEPARTING INDIVIDUAL HAD FAILED TO FILE AND PAY AS REQUIRED. THE TAX DECLARATION WOULD SIMPLY FACILITATE IDENTIFICATION OF SUCH INDIVIDUALS, WHILE IMPOSING A LESS ONEROUS ADMINISTRATIVE BURDEN AND LOWER COSTS THAN THE TAX CLEARANCE CERTIFICATE.

9. THE OTHER POTENTIALLY TROUBLESOME CASE WHICH THIS PROCEDURE MIGHT CREATE WOULD BE ONE IN WHICH (1) THE INDIVIDUAL'S DECLARATION INDICATED NO TAXABLE PHIL INCOME AND HIS NAME WAS ACCORDINGLY NOT FORWARDED; BUT (2) THE PHIL AUTHORITIES ADDUCED EVIDENCE THAT THERE WAS SUCH INCOME. IF THE INDIVIDUAL HAD NOT YET DEPARTED THE PHILIPPINES, HIS CASE WOULD BE A PROPER SUBJECT FOR INVESTIGATION BY GOP AUTHORITIES AND OUR OBLIGATIONS WOULD BE THE SAME AS IN ANY OTHER CASE WHERE THE GOP ALLEGED TRANSGRESSION OF PHIL LAW. IF THE INDIVIDUAL HAD DEPARTED, WE WOULD HAVE NO OBLIGATION TO RETURN HIM OR TO MAKE GOOD ON HIS ALLEGED TAX DEFICIT. SINCE THE DECLARATION WOULD BE A USG FORM, WE MIGHT--WHETHER HE HAD DEPARTED OR NO--WISH TO INVESTIGATE ANY POSSIBLE FALSE SWEARING ON HIS DECLARATION, BUT THIS WOULD BE A MATTER FOR U.S. DISCRETION ALONE.

10. TWO ISSUES REMAIN SOMEWHAT AMBIGUOUS. ALTHOUGH DRAFT FORM IN REF A SPEAKS OF "YOU AND YOUR SPOUSE", PHIL REP HAS BEEN UNCLEAR WHETHER REQUIREMENT FOR DECLARATION WOULD EXTEND TO ALL DIVILIANS AND DEPENDENTS. WE BELIEVE IT PROBABLY SHOULD SINCE IT WOULD PRESUMABLY BE EASIER FOR

US TO ADMINISTRATIVELY TO USE SAME FORM FOR ALL U.S. PERSONNEL, AND SINCE CIVILIANS AND DEPENDENTS WOULD THEREBY BE EXEMPTED FROM MORE COMPLICATED AND MORE COSTLY TAX CLEARANCE CERTIFICATE TO WHICH THEY ARE NOW SUBJECT.

11. PHIL REP HAS ALSO BEEN UNCLEAR ON WHETHER HE EXPECTS ONLY THE NAMES OF THOSE WHOSE FORMS INDICATE TAXABLE
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PHIL INCOME OR WHETHER HE EXPECTS THE FORMS THEMSELVES. THE DRAFT FORM IN REF A DOES NOT ASK FOR ANY DETAILED INFORMATION ON TAXABLE INCOME. ONLY APPARENT PURPOSE OF PROVIDING FORM ITSELF TO GOP WOULD, THEREFORE, APPEAR TO BE AS EVIDENCE OF A FALSE SWEARING. WE THINK PROVIDING FORM WOULD ACCORDINGLY BE UNNECESSARY AND UNWISE. OUR INTENTION IS TO KEEP FORM AND ANY ISSUES OF FALSE SWEARING AS EXCLUSIVELY U.S. CONCERNS.

12. WE INTEND TO PURSUE THIS POSSIBILITY INFORMALLY AND ON CLEAR AD REFERENDUM BASIS. WOULD APPRECIATE WASHINGTON VIEWS. SULLIVAN

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